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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,266	07/03/2003	Michael A. Fetcenko	OBC-103.1	4865

24963 7590 03/09/2006

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EXAMINER	
WYSZOMIERSKI, GEORGE P	
ART UNIT	**PAPER NUMBER**
1742	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/613,266	FETCENKO ET AL.	
	Examiner	Art Unit	
	George P. Wyszomierski	1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Page 1 of the specification states that the present invention "relates to" an earlier application. This statement has no legal effect. If Applicant wishes to assert that the present application is a continuation-in-part (CIP) of the earlier application, then that should be specifically recited, and a new oath or declaration filed with appropriate reference to the earlier application.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 6, 11, 12 and 15 are rejected under 35 U.S.C. 102(a) as being anticipated by Tanigawa et al. (U.S. Patent 6,471,890).

Tanigawa discloses making active nickel-containing materials in the presence of an oxidizing agent, the materials comprising nickel and cobalt hydroxides and oxy-hydroxides. With respect to claim 6, at least Example 7 of Tanigawa discloses a step in accord with this claim. Thus, all aspects of the claimed invention are held to be fully met by Tanigawa et al.

4. Claims 1, 6, 11, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogauchi et al. (U.S. patent 5,489,314).

Claims 1, 3, 6, 11, 12, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ovshinsky et al. (U.S. Patent 5,523,182).

Claims 1, 6, 11, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Baba et al. (U.S. Patent 5,702,762).

Claims 1, 6-9, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Sakamoto et al. (U.S. Patent 6,153,334).

All of the above references disclose making active nickel-containing particles by oxidation of spherical compositions as recited in the instant claims, by a method in accord with that recited in instant claim 6. With respect to instant claim 3, Ovshinsky column 14, lines 20-22 discloses the limitations of this claim. With respect to instant claims 7-9, Sakamoto column 10, lines 10-39 discloses a process in accord with these claims. With respect to claim 11, the materials made by each of Bogauchi, Ovshinsky and Baba are Ni-Co based. With respect to instant claim 12, the materials of Ovshinsky clearly comprise nickel hydroxide and oxy-hydroxide, and the materials of Bogauchi and Baba comprise nickel hydroxide and would inherently contain an amount of nickel oxy-hydroxide due to the exposure to oxygen as disclosed in those references. With respect to instant claim 15, the materals of Bogauchi and Ovshinsky comprise cobalt hydroxide and oxy-hydroxide. Thus, all aspects of the claimed invention are either fully disclosed or inherently present in the Bogauchi, Ovshinsky, Baba, or Sakamoto et al. patents.

5. Claims 1 and 6-12 are rejected under 35 U.S.C. 102(e) as being anticiapted by Ochiai et al. (PG Pub. No. 2004/0241545).

Ochiai discloses making Ni-Co base active metal particles by oxidizing a starting material in a solution containing the ingredients as recited in instant claims 7-9. The chemical reactions that would occur in such a process are in accord with what is recited in instant claim 6. Thus, all aspects of the claimed invention are held to be fully disclosed by Ochiai et al.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2, 5 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Tanigawa et al., Bogauchi et al., Ovshinsky et al., Baba et al., Sakamoto et al., or Ochiai et al.

The prior art references, discussed supra, do not specify the degree of oxidation of the materials resulting from their respective processes. However, the degree of oxidation is clearly dependent upon such factors as the composition of the initial material, the precise oxidation agent used and in what amount, and the temperature employed in the prior art processes. All of these parameters can be varied in the prior art processes, as evidenced by the numerous examples disclosed in each one of the prior art references. Thus, the examiner's position is that one of ordinary skill in the art would have easily been able to vary the reaction conditions in each of the prior art references to achieve a desired degree of oxidation. Consequently, the

disclosures of Tanigawa et al., Bogauchi et al., Ovshinsky et al., Baba et al., Sakamoto et al., or Ochiai et al. are held to create a prima facie case of obviousness of the presently claimed invention.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ovshinsky et al.

Column 14 of Ovshinsky uses a seed material as stated in item no. 4 supra. Ovshinsky does not disclose the degree of oxidation of the seed material or the resulting products. However, Ovshinsky is concerned with the production of hydroxides and oxy-hydroxides, not oxides. It is thus a reasonable assumption that the degree of oxidation in the prior art process is near 0%, i.e. within the limits of the instant claim.

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto et al. (U.S Patent 6,153,334).

Sakamoto does not specify that the prior art process produces a material comprising cobalt, as required by the instant claims. However, example 8 of Sakamoto discusses the preparation of powders containing cobalt. Thus, to produce materials in accord with the instant claims would have been well within the level of one of ordinary skill in the art, given the disclosure of Sakamoto et al.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto et al. or Ochiai et al.

The prior art, discussed supra, does not specify all of the properties as recited in the instant claim. However, these references disclose a tap density within the range of the instant

claim; see the Abstracts of Sakamoto or Ochiai. Further, it is noted that the materials of the prior art are of the same composition and made by the same process as that of the instant claims, as set forth in the rejections under 35 USC 102 supra. Based on this, it is a reasonable assumption that the apparent density and particle size of the particles resulting from the prior art processes would be the same or substantially so as the values of these parameters in the presently claimed process. Consequently, a prima facie case of obviousness is established between the disclosures of Sakamoto et al. or Ochiai et al. and the presently claimed invention.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (571) 272-1252. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (571) 272-1244. All patent application related correspondence transmitted by facsimile must be directed to the new central facsimile number, (571)-273-8300. This new Central FAX Number is the result of relocating the Central FAX server to the Office's Alexandria, Virginia campus.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GEORGE WYSZOMIERSKI
PRIMARY EXAMINER
GROUP 1700

GPW
March 7, 2006